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[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. § 197; Dec. Dig. § 93 (4).\* 12 Va.-W. Va. Enc. Dig. 846.]

**5. Negligence (§ 136 (5)\*)—Province of Court.**—Where a ground of negligence is wholly unsupported by the evidence, the court may charge the jury to disregard it.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 282-284; Dec. Dig. § 136 (5).\* 10 Va.-W. Va. Enc. Dig. 412.]

**6. Street Railroads (§ 112 (1)\*)—Injuries to Persons on Tracks—Burden of Proof.**—Where plaintiff, suing for the death of one run down by a street car, contended that if the car had not been overloaded it could have been stopped in time to have avoided the injury, plaintiff had the burden of proving that fact.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. §§ 227, 228; Dec. Dig. § 112 (1).\* 12 Va.-W. Va. Enc. Dig. 846.]

**7. Street Railroads (§ 114 (7)\*)—Injuries to Persons on Tracks—Evidence.**—In an action for the death of one run down by a street car, evidence held insufficient to show that the overloading of the car prevented the motorman from stopping it in time to avoid the injury.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. § 244; Dec. Dig. § 114 (7).\* 12 Va.-W. Va. Enc. Dig. 846.]

Error to Circuit Court of City of Norfolk.

Action by W. E. Winstead's Administrator against the Virginia Railway & Power Company. There was a judgment for plaintiff, and defendant brings error. Reversed and remanded.

*W. H. Venable*, of Norfolk, and *H. W. Anderson* and *A. D. Christian*, both of Richmond, for plaintiff in error.

*Jas. H. Corbitt*, of Suffolk, and *Jeffries & Jeffries*, of Norfolk, for defendant in error.

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#### LANCASTER v. STOKES.

June 8, 1916.

[89 S. E. 85.]

**1. Exceptions, Bill of (§ 40 (2)\*)—Signature—Time—Authority to Order Extension.**—A hustings court judge has no jurisdiction to make an order extending the time for signing a bill of exceptions beyond the statutory period.

[Ed. Note.—For other cases, see Exceptions, Bill of, Cent. Dig. § 58; Dec. Dig. § 40 (2); Judges, Cent. Dig. § 149.\* 5 Va.-W. Va. Enc. Dig. 392.]

**2. Appeal and Error (§ 554 (2)\*)—Bill of Exceptions—Failure to Promptly Settle—Effect.**—A writ of error will not be dismissed be-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

cause the trial court, on account of dispute as to the evidence and his own engagements, failed to settle and sign the bill of exceptions within the statutory period.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2472, 2477; Dec. Dig. § 554 (2).\* 1 Va.-W. Va. Enc. Dig. 502.]

**3. Master and Servant (§ 6\*)—Contract of Employment—Officers—Sufficiency of Evidence.**—In an action against a corporation and its president for breach of an alleged contract of hire, the evidence held not to sustain a verdict that the president as an individual promised to hire plaintiff for himself.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 6; Dec. Dig. § 6.\* 9 Va.-W. Va. Enc. Dig. 665.]

**4. Corporations (§ 306\*)—Officers—Liability for Unauthorized Act—Form of Action.**—In an action of assumpsit against a corporation and its president for breach of an alleged contract of hire, the president cannot be held personally liable because he misrepresented his authority to make the contract for the company.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. §§ 1457, 1458; Dec. Dig. § 306.\* 3 Va.-W. Va. Enc. Dig. 567.]

Error to Hustings Court of Richmond.

Action by H. B. Stokes against the Universal Screen & Blind Company, Incorporated, and George W. Lancaster. Judgment for plaintiff against defendant Lancaster and in favor of defendant Universal Screen & Blind Company, and defendant Lancaster brings error. Reversed and remanded.

*Pollard, Wise & Chichester*, of Richmond, for plaintiff in error.

*Gunn & Mathews* and *R. E. Scott*, all of Richmond, for defendant in error.

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ARENDALL et al. v. ARENDALL et al.

June 8, 1916.

[89 S. E. 87.]

**1. Homestead (§ 150 (2)\*)—Setting Apart—Conclusiveness—Questions—Determine.**—Where, after death of an occupant of land, on motion of his widow, the county court ordered commissioners to assign a homestead exemption to the widow, and thereafter the county court set apart to her the land and property of her late husband, the proceeding was conclusive on the widow and those claiming through her relative to the title of the land being in the husband; the assignment of a homestead being in the exercise of the probate

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.